

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 260 of 1999

in

SPECIAL CIVIL APPLICATION No 9129 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH and
MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KIRITBHAI MANILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Appellant
MR KT DAVE, AGP for Respondent No. 1
DELETED for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 15/03/99

ORAL JUDGEMENT

1. The appellant-petitioner challenged order of his detention dated 2/9/1998 passed by the District Magistrate, Vadodara u/S. 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('PBM' for short) by way of writ petition bearing Special Civil Application No. 9129 of 1998 under Article 226 of the Constitution of India on number of grounds. By the impugned decision dated 5/3/1999 a learned Single Judge of this Court did not accept any of the grounds of challenge to the impugned detention order or continued detention of the petitioner under the said order. He accordingly held that the detention order was perfectly in accordance with law and it required no interference. The petition accordingly came to be dismissed. That is how the petitioner-appellant has been before this Court in this Letters Patent Appeal.

2. Mr. H.R. Prajapati, learned advocate for the appellant has canvassed only one ground and he has not pressed for any other grounds, which have not been accepted by the learned Single Judge. The ground which he has pressed into service is with regard to non-supply of copies of relevant documents relied upon by the detaining authority. The learned Single Judge has considered this ground in para. 14 of the impugned decision, which reads as under :-

"14. Another contention has been that the documents referred to and relied upon in the grounds of detention were not supplied to the detenu and as such the right to make effective representation was jeopardized. It was also contended that the copies of sale bills were illegible as a result of which the detenu was again jeopardized in making effective representation. So far as copies of bills are concerned the original bills were prepared by the detenu or by his staff and in whatever manner those bills were prepared, its copies were furnished to the petitioner. The xerox copies could not be improvement over illegible original copies of the sale bills. Consequently on this ground it cannot be said that the right to make effective representation was in any way affected nor it can be said that the detaining authority has not applied its mind to illegible sale bills and as such his subjective satisfaction is not vitiated."

3. Mr. H.R. Prajapati drew our attention to ground no. 9.6 which translated into English, would read as under :-

"Looking to sale bill book of the said Government approved fair price shop no. 189, date is not written every day."

It has, therefore, been submitted that the sale bill book or the sale bill books concerning fair price shop no. 189 containing such sale bills as would not state therein respective dates, would provide relevant material to the detaining authority to come to subjective satisfaction that the dates were not written every day. Exploring this ground of detention vis-a-vis the ground of challenge of non-supply of copies of such relevant sale bills or the sale bill books, as the case may be, Mr. Prajapati has drawn our attention to the seizure memo which inter-alia states about seizure of sale bill books, 5 in number. It could not be disputed by the Ld. A.G.P. that these sale bill books concerning fair price shop no. 189 were seized and that the detaining authority relies upon the relevant bills from these sale bill books, which would display non-writing of dates for the aforesaid ground of detention. It could be seen from the last para. of notice issued on behalf of the appellant on 26/10/1998 that the petitioner made grievance about non-supply of copy of bill book of shop no. 189, which has been relied upon by the detaining authority. The reply to this notice given on 11/1/1999 indicates that there is no reference to the bill books in the context of non-supply of either copies of the bill books or copies of the relevant bills not containing dates so as to substantiate the ground of detention referred to hereinabove. Thus, on scrutiny of records it has clearly appeared to this Court that copies of the relevant bills on which reliance has been placed, have not been supplied. It would, therefore, clearly appear that the petitioner could not have made the effective representation against his continued detention. It appears from the aforesaid para. in the impugned judgment of the learned Single Judge that none could focus the attention on this very relevant aspect of the matter. In that view of the matter, continued detention of the petitioner-appellant has clearly been rendered illegal. We, therefore, pass following order :-

Only on the aforesaid limited ground, which has

been canvassed before us, continued detention of the petitioner-appellant under the impugned detention order will have to be held as illegal and the appellant shall be set at liberty as a consequence thereof immediately, if not required for any other case. This appeal shall stand allowed only on this limited ground, by allowing Special Civil Application also on this limited ground, making rule absolute to that extent. D.S.P.

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PVR.